

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

**IN RE METHYL TERTIARY BUTYL ETHER
PRODUCTS LIABILITY LITIGATION**

This document relates to:

***City of New York v. Amerada Hess Corporation, et al.,*
No. 04 Civ. 3417 (SAS)**

Master File No. 1:00-1898
MDL 1358 (SAS)
M21-88

**REPLY DECLARATION OF JENNIFER KALNINS TEMPLE IN FURTHER SUPPORT
OF DEFENDANTS' MOTION *IN LIMINE* TO EXCLUDE EVIDENCE AND ARGUMENT
REGARDING DAMAGE CAUSED BY TBA**

Jennifer Kalnins Temple, an attorney duly admitted to practice law in the State of New York and in this Court, hereby declares under penalty of perjury:

1. I am an attorney with the law firm of McDermott Will & Emery LLP, counsel for the Exxon Mobil Defendants in the above-captioned matter. I submit this Declaration in support of ExxonMobil's Reply Memorandum of Law in Support of Defendants' Motion *in Limine* to Exclude Evidence and Argument Regarding Damage Caused by TBA (hereinafter "Reply"). This Declaration authenticates the exhibit attached hereto and relied on in support of the Reply. In accordance with this Court's Individual Rules and Procedures, the exhibit has been excerpted to include only the relevant material. Copies of the exhibit appended hereto were made at my direction on or around June 2, 2009.

2. Attached hereto as Exhibit 1 is a true and correct copy of excerpts from Plaintiff's Proposed Pre-Trial Order (May 8, 2009).

Dated: New York, NY
June 2, 2009

Respectfully submitted,


Jennifer Kalnins Temple

EXHIBIT 1

Riccardulli, Stephen

From: Joshua Stein [jstein@sherleff.com]
Sent: Saturday, May 09, 2009 3:57 AM
To: Riccardulli, Stephen; Susan Amron; Vic Sher
Cc: Pardo, James; Sacripanti, Peter; Kalnins Temple, Jennifer; moller@blankrome.com; ben.krowicki@bingham.com; coy.connelly@bracewellgiuliani.com
Subject: RE: MDL 1358: City of New York - Defendants' Draft Proposed Joint Pretrial Order

Attachments: Plaintiffs Draft Pretrial Order.pdf



Plaintiffs Draft
Pretrial Orde...

Mr. Riccardulli -

Please find attached the City's draft proposed Pretrial Order. The City looks forward to discussing areas of potential agreement. In particular, as to potential stipulated facts, the City has included a set of proposed stipulated facts illustrative of its approach to this matter, as well as additional topical areas where we could reach similar agreement.

Sincerely,

Joshua Stein
Sher Leff LLP
450 Mission St. #400
San Francisco, CA 94105

-----Original Message-----

From: Riccardulli, Stephen [mailto:sriccardulli@mwe.com]
Sent: Fri 5/8/2009 7:26 PM
To: Susan Amron; Vic Sher; Joshua Stein
Cc: Pardo, James; Sacripanti, Peter; Kalnins Temple, Jennifer; moller@blankrome.com; ben.krowicki@bingham.com; coy.connelly@bracewellgiuliani.com
Subject: MDL 1358: City of New York - Defendants' Draft Proposed Joint Pretrial Order

Susan,

Per our conversation from earlier this week, attached is Defendants' Draft Proposed Joint Pretrial Order. As we discussed, we are not exchanging any of the related materials (e.g., verdict forms) at this time. We should talk early next week to select dates for the meet-and-confer to finalize the Pretrial Order.

Regards,

Stephen J. Riccardulli

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New York, New York 10173-1922

tel (212) 547 - 5579

fax (212) 547 - 5444

Scheindlin, District Judge:

Having conferred among themselves and with the Court pursuant to Rule 16, Fed. R. Civ. P., the parties adopt the following statements, directions, and agreements as the Pretrial Order:

1. TRIAL COUNSEL:

Plaintiff's Counsel:

Susan E. Amron
Environmental Law Division
New York City Law Department
100 Church Street
New York, NY 10007

Victor M. Sher
Joshua Stein
Sher Leff LLP
450 Mission St. #400
San Francisco, CA 94105

Robert S. Chapman
Greenberg Glusker LLP
1900 Avenue of the Stars, 21st Floor
Los Angeles, CA 90067

2. NATURE OF ACTION AND JURISDICTION / VENUE:

The Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1332(a) and venue is proper pursuant to 28 U.S.C. § 1391(a)(2). The City of New York brings this action to recover damages for the contamination with MTBE of the NYC Groundwater system, specifically the wells in the relevant geographic area of Queens. Defendants are liable for the costs of cleaning up their pollution, punitive damages for their malice in creating the pollution problem in the groundwater, civil penalties, attorneys fees and costs, and injunctive relief under the 9 claims advanced by the City of New York:

- (1) Strict Liability for Design Defect
- (2) Strict Liability for Failure to Warn
- (3) Negligence
- (4) Conspiracy
- (5) Public Nuisance
- (6) Private Nuisance
- (7) Trespass
- (8) New York's Navigation Law
- (9) Toxic Substances Control Act.

87. Station 5, which consists of Well 5 and Well 5A, is equipped with an air stripper to treat water from both Wells before the water is placed into the distribution system.

88. The air stripper at Station 5 was installed in 1987, and was not designed to remove MTBE.

89. The City first detected MTBE in raw water at Well 5 in January 1997.

90. The City most recently detected MTBE in raw water at Well 5 on March 27, 2007, at a concentration of 0.7 ppb.

91. The City has detected MTBE in 111 of 123 raw water samples taken at Well 5 between January 1997 and March 27, 2007.

92. After decreasing in 1999, concentrations of MTBE in the raw water at Well 5 began increasing in late 2000.

93. The City relies on Well 5 for water during drought and other times of operational need.

94. The City will continue to rely on Well 5 for water during drought and other times of operational need.

95. Releases of MTBE gasoline from gasoline stations within or in the vicinity of Well 5's capture zone will result in MTBE contamination of the raw water drawn into Well 5.

96. As a result of releases of MTBE gasoline from gasoline stations within or in the vicinity of Well 5's capture zone, MTBE concentrations in the water drawn into Well 5 will reach in excess of 70 ppb and remain above 3 ppb until 2027.

97. In order to provide water from Well 5 to consumers, the City will need to treat the raw water to remove MTBE.

98. Treatment at Well 5 must be designed to remove MTBE from the raw water so that MTBE cannot be detected by EPA-approved methods for testing MTBE in drinking water.

99. The City will need to install new treatment on Well 5 in order to provide water from Well 5 to consumers.

100. Concentrations of MTBE in the raw water at Well 5 can be reduced to non-detection levels either with liquid-phase GAC treatment or with Air Stripping with Vapor-Phase GAC treatment.

101. The capital cost of on-site treatment to remove MTBE from the raw water at Well 5 ranges from \$9,930,000 for Liquid-Phase GAC treatment to \$29,570,000 for Air Stripping with Vapor-Phase GAC treatment.

242. During the period that the City has been sampling its wells for MTBE, MTBE has been detected in 5 of 7 samples drawn from Well 6A.

243. MTBE was first detected in raw water drawn from Well 6B on March 26, 2002 at a concentration of 2 micrograms per liter.

244. The highest concentration of MTBE detected in raw water drawn from Well 6B so far was 6.5 micrograms per liter, detected on August 12, 2002.

245. MTBE was most recently detected in raw water drawn from Well 6B on April 10, 2007 at a concentration of 2.3 micrograms per liter.

246. During the period that the City has been sampling its wells for MTBE, MTBE has been detected in 40 of 40 samples drawn from Well 6B.

247. MTBE was first detected in raw water drawn from Well 6D on April 18, 2000 at a concentration of 1.5 micrograms per liter.

248. The highest concentration of MTBE detected in raw water drawn from Well 6D so far was 350 micrograms per liter, detected on January 28, 2003.

249. MTBE was most recently detected in raw water drawn from Well 6D on February 28, 2007 at a concentration of 77 micrograms per liter.

250. During the period that the City has been sampling its wells for MTBE, MTBE has been detected in 18 of 18 samples drawn from Well 6D.

251. MTBE was first detected in raw water drawn from Well 33 on April 18, 2000 at a concentration of 0.73 micrograms per liter.

252. The highest concentration of MTBE detected in raw water drawn from Well 33 so far was 2.1 micrograms per liter, detected on April 21, 2000.

253. MTBE was most recently detected in raw water drawn from Well 33 on June 28, 2004 at a concentration of 0.63 micrograms per liter.

254. During the period that the City has been sampling its wells for MTBE, MTBE has been detected in 5 of 47 samples drawn from Well 33.

255. As a result of releases of MTBE gasoline from gasoline stations within or in the vicinity of the capture zones for the Station 6 Wells, MTBE is projected to be present in raw water drawn from each of the Station 6 Wells at levels above 1 ppb from the beginning of Station 6 operations through at least 2040.

256. As a result of releases of MTBE gasoline from gasoline stations within or in the vicinity of its capture zone, MTBE is projected to be present in raw water drawn from Well 33 at levels above 10 ppb from the beginning of Station 6 operations through at least 2040.